

MARK T. BENNETT, SBN 199280
E-Mail: mbennett@mgfllp.com
CHAD T. WISHCHUK, SBN 214779
E-Mail: cwishchuk@mgfllp.com
DANIEL P. SCHOLZ, SBN 264786
E-Mail: dscholz@mgfllp.com

MARKS, GOLIA & FINCH, LLP

ATTORNEYS AT LAW

8620 SPECTRUM CENTER BOULEVARD – SUITE 900

SAN DIEGO, CALIFORNIA 92123-1489

TELEPHONE: (858) 737-3100

FACSIMILE: (858) 737-3101

Attorneys for Defendants Challenger Sheet Metal, Inc., The Augustine
Company, Echo Pacific Construction, Inc., and
Jaynes Corporation of California

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BRANDON DURAN and BYRON
PEDROZA, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

CHALLENGER SHEET METAL,
INC., a California corporation;
THE AUGUSTINE COMPANY,
a California corporation
ECHO PACIFIC CONSTRUCTION,
INC., a California corporation
JAYNES CORPORATION OF
CALIFORNIA, a California
corporation
and DOES 1-750,

Defendants.

CASE NO: 10CV2643 DMS BGS

ANSWER OF CHALLENGER
SHEET METAL, INC. TO THE
UNVERIFIED COMPLAINT OF
BRANDON DURAN AND BYRON
PEDROZA

DEMAND FOR JURY TRIAL

Assigned to:
Hon. Dana M. Sabraw
Hon. Bernard G. Skomal

Complaint Filed: November 22, 2010
Trial Date: Not Set

Defendant Challenger Sheet Metal, Inc. (“Defendant”), answers the
unverified complaint (“Complaint”) of plaintiffs Brandon Duran and Byron
Pedroza, individually and on behalf of all others similarly situated (collectively
“Plaintiffs”), as follows:

PARTIES

1
2 1. Defendant admits only that plaintiff Duran was employed by
3 Defendant from time-to-time during the approximate time alleged in paragraph 1
4 of the Complaint. As the term “sheet metal journeyman” is not defined,
5 Defendant is without sufficient knowledge to form a belief as to the truth of the
6 allegations in paragraph 1, and accordingly denies the allegations of paragraph 1.

7 2. Defendant admits that plaintiff Pedroza was employed by
8 Defendant from time-to-time during the approximate time alleged in paragraph 2
9 of the Complaint. As the term “sheet metal journeyman” is not defined,
10 Defendant is without sufficient knowledge to form a belief as to the truth of the
11 allegations in paragraph 2, and accordingly denies the allegations of paragraph 2.

12 3. Defendant admits that it is a California corporation that does
13 business in California and is an employer. Except as specifically admitted,
14 Defendant denies the allegations in paragraph 3.

15 4. Defendant admits the allegations of the first sentence in paragraph 4,
16 although it does and has possessed other licenses as well. As the terms “sheet
17 metal work” and “construction craft work” are not defined, Defendant is without
18 sufficient knowledge to form a belief as to the truth of the allegations in the
19 second sentence of paragraph 4, and accordingly denies the allegations of the
20 second sentence of paragraph 4.

21 5. As the term “sheet metal work” is not defined, Defendant is without
22 sufficient knowledge to form a belief as to the truth of the allegations in
23 paragraph 5, and accordingly denies the allegations of paragraph 5 except that
24 Defendant admits it is and has been an employer on construction projects.

25 6. Defendant admits that it has entered into construction contracts with
26 The Augustine Company and some of those contracts concerned public works.
27 Except as specifically admitted, the allegations of paragraph 6 are denied.

1 7. Defendant admits that it has entered into construction contracts with
2 Echo Pacific Construction, Inc., and some of those contracts concerned public
3 works. Except as specifically admitted, the allegations of paragraph 7 are denied.

4 8. Defendant admits that it has entered into construction contracts with
5 Jaynes Corporation of California and some of those contracts concerned public
6 works. Except as specifically admitted, the allegations of paragraph 8 are denied.

7 9. Defendant is without sufficient knowledge to form a belief as to the
8 truth of the allegations in paragraph 9, and accordingly denies the allegations of
9 paragraph 9 and specifically denies that damages were suffered by anyone.

10 10. Defendant denies the allegations of paragraph 10.

11 11. Defendant denies the allegations of paragraph 11.

12 12. Defendant denies that jurisdiction or venue is in the San Diego
13 Superior Court. Defendant is without sufficient knowledge to form a belief as to
14 the truth of the allegations regarding principal offices of other defendants in
15 paragraph 12, and accordingly denies the remaining allegations of paragraph 12.

16 FACTUAL ALLEGATIONS

17 13. As the terms “sheet metal” and “sheet metal work” are not defined,
18 Defendant is without sufficient knowledge to form a belief as to the truth of the
19 allegations in paragraph 13, and accordingly denies the allegations of paragraph
20 13.

21 14. Defendant denies the allegations of paragraph 14.

22 15. The allegations of paragraph 15 constitute a legal conclusion to
23 which Defendant need not respond.

24 16. As the term “services” is not defined and the alleged projects are not
25 specifically defined, Defendant is without sufficient knowledge to form a belief
26 as to the truth of the allegations in paragraph 16, and accordingly denies the
27 allegations of paragraph 16.

17. The allegations of paragraph 17 constitute a legal conclusion to which Defendant need not respond.

18. Defendant admits only that Plaintiffs were employed at times as hourly employees and performed some on-site construction work, but denies the remaining allegations of paragraph 18.

19. Defendant denies the allegations of paragraph 19.

20. Defendant denies the allegations of paragraph 20.

21. Defendant denies the allegations of paragraph 21.

22. Defendant denies the allegations of paragraph 22.

23. Defendant denies the allegations of paragraph 23 and specifically denies that it failed to pay the minimum prevailing wage.

24. Defendant denies the allegations of paragraph 24.

25. Defendant denies the allegations of paragraph 25.

26. Defendant denies the allegations of paragraph 26.

27. The allegations of paragraph 27 contain an incomplete description of the California Labor Code, and accordingly Defendant denies the allegations of paragraph 27 on this basis.

28. Defendant denies the allegations of paragraph 28.

29. Defendant denies the allegations of paragraph 29.

30. The allegations of paragraph 30 contain an incomplete description of the California Labor Code, and accordingly Defendant denies the allegations of paragraph 30 on this basis.

31. Defendant denies the allegations of paragraph 31.

32. Defendant denies the allegations of paragraph 32.

33. Defendant denies the allegations of paragraph 33.

34. Defendant denies the allegations of paragraph 34.

35. Defendant denies the allegations of paragraph 35.

CLASS ACTION ALLEGATIONS

36. Defendant denies the allegations of paragraph 36 and all subdivisions of paragraph 36.

37. The allegations of paragraph 37 constitute a legal conclusion to which Defendant need not respond.

38. Defendant denies the allegations of paragraph 38.

39. Defendant denies the allegations of paragraph 39.

40. Defendant admits that Plaintiffs allege that “Challenger’s records would provide information as to the number of all class members.” Except as specifically admitted, Defendant denies the allegations of paragraph 40.

41. Defendant denies the allegations of paragraph 41 and all subdivisions of paragraph 41.

42. Defendant denies the allegations of paragraph 42.

43. Defendant denies the allegations of paragraph 43.

44. Defendant denies the allegations of paragraph 44.

45. Defendant denies the allegations of paragraph 45.

FIRST CAUSE OF ACTION

46. Defendant incorporates by reference its answer to paragraphs 1 through 45 above as though set forth in full at this point.

47. The allegations of paragraph 47 contain an incomplete description of the California Business & Professions Code, and accordingly Defendant denies the allegations of paragraph 47 on this basis.

48. Defendant denies the allegations of paragraph 48 and all subdivisions of paragraph 48.

49. Defendant denies the allegations of paragraph 49.

50. Defendant denies the allegations of paragraph 50.

51. Defendant denies the allegations of paragraph 51.

52. Defendant denies the allegations of paragraph 52.

53. Defendant denies the allegations of paragraph 53.

54. Defendant denies the allegations of paragraph 54.

55. Defendant denies the allegations of paragraph 55.

56. Defendant denies the allegations of paragraph 56.

57. Defendant denies the allegations of paragraph 57.

58. Defendant denies the allegations of paragraph 58.

SECOND CAUSE OF ACTION

59. Defendant incorporates by reference its answer to paragraphs 1 through 58 above as though set forth in full at this point.

60. The allegations of paragraph 60 contain an incomplete description of the California Labor Code, and accordingly Defendant denies the allegations of paragraph 60 on this basis.

61. The allegations of paragraph 61 contain an incomplete description of the California Labor Code, and accordingly Defendant denies the allegations of paragraph 61 on this basis.

62. Defendant denies the allegations of paragraph 62.

63. The allegations of paragraph 63 contain an incomplete description of the California Labor Code, and accordingly Defendant denies the allegations of paragraph 63 on this basis.

64. The allegations of paragraph 64 contain an incomplete description of the California Labor Code, and accordingly Defendant denies the allegations of paragraph 64 on this basis.

65. Defendant denies the allegations of paragraph 65.

66. Defendant denies the allegations of paragraph 66.

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THIRD CAUSE OF ACTION

67. Defendant incorporates by reference its answer to paragraphs 1 through 66 above as though set forth in full at this point.

68. The allegations of paragraph 68 contain an incomplete description of the California Labor Code, and accordingly Defendant denies the allegations of paragraph 68 on this basis.

69. The allegations of paragraph 69 contain an incomplete description of the California Labor Code, and accordingly Defendant denies the allegations of paragraph 69 on this basis.

70. The allegations of paragraph 70 contain an incomplete description of the California Labor Code, and accordingly Defendant denies the allegations of paragraph 70 on this basis.

71. The allegations of paragraph 71 contain an incomplete description of the California Labor Code, and accordingly Defendant denies the allegations of paragraph 71 on this basis.

72. The allegations of paragraph 72 contain an incomplete description of the California Labor Code, and accordingly Defendant denies the allegations of paragraph 72 on this basis.

73. Defendant denies the allegations of paragraph 73.

74. The allegations of paragraph 74 contain an incomplete description of the California Labor Code, and accordingly Defendant denies the allegations of paragraph 74 on this basis.

75. Defendant denies the allegations of paragraph 75.

76. Defendant denies the allegations of paragraph 76.

FOURTH CAUSE OF ACTION

77. Defendant incorporates by reference its answer to paragraphs 1 through 76 above as though set forth in full at this point.

1 78. Defendant denies the allegations of paragraph 78.

2 79. The allegations of paragraph 79 contain an incomplete description of
3 the California Labor Code, and accordingly Defendant denies the allegations of
4 paragraph 79 on this basis.

5 80. The allegations of paragraph 80 contain an incomplete description of
6 the California Labor Code, and accordingly Defendant denies the allegations of
7 paragraph 80 on this basis.

8 81. The allegations of paragraph 81 contain an incomplete description of
9 the California Labor Code, and accordingly Defendant denies the allegations of
10 paragraph 81 on this basis.

11 82. The allegations of paragraph 82 contain an incomplete description of
12 the California Labor Code, and accordingly Defendant denies the allegations of
13 paragraph 82 on this basis.

14 83. Defendant denies the allegations of paragraph 83.

15 84. Defendant denies the allegations of paragraph 84.

16 85. Defendant denies the allegations of paragraph 85.

17 FIFTH CAUSE OF ACTION

18 86. Defendant incorporates by reference its answer to paragraphs 1
19 through 85 above as though set forth in full at this point.

20 87. The allegations of paragraph 87 contain an incomplete description of
21 the California Labor Code, and accordingly Defendant denies the allegations of
22 paragraph 87 on this basis.

23 88. The allegations of paragraph 88 contain an incomplete description of
24 the California Labor Code, and accordingly Defendant denies the allegations of
25 paragraph 88 on this basis.

26 89. Defendant denies the allegations of paragraph 89.

27 90. Defendant denies the allegations of paragraph 90.

91. Defendant denies the allegations of paragraph 91.

92. Defendant denies the allegations of paragraph 92.

SIXTH CAUSE OF ACTION

93. Defendant incorporates by reference its answer to paragraphs 1 through 92 above as though set forth in full at this point.

94. The allegations of paragraph 94 contain an incomplete description of the California Labor Code, and accordingly Defendant denies the allegations of paragraph 94 on this basis.

95. The allegations of paragraph 95 contain an incomplete description of the California Labor Code, and accordingly Defendant denies the allegations of paragraph 95 on this basis.

96. The allegations of paragraph 96 contain an incomplete description of the California Labor Code, and accordingly Defendant denies the allegations of paragraph 96 on this basis.

97. Defendant denies the allegations of paragraph 97.

98. Defendant denies the allegations of paragraph 98.

99. Defendant denies the allegations of paragraph 99.

SEVENTH CAUSE OF ACTION

100. Defendant incorporates by reference its answer to paragraphs 1 through 99 above as though set forth in full at this point.

101. Defendant denies the allegations of paragraph 101.

102. Defendant denies the allegations of paragraph 102.

103. The allegations of paragraph 103 constitute a legal conclusion to which Defendant need not respond and is denied in any event.

104. The allegations of paragraph 104 constitute a legal conclusion to which Defendant need not respond and is denied in any event.

105. Defendant denies the allegations of paragraph 105.

1 106. Defendant is without sufficient knowledge to form a belief as to the
2 truth of the allegations in paragraph 106, and accordingly denies the allegations
3 of paragraph 106.

4 107. The allegations of paragraph 107 contain an incomplete description
5 of the California Labor Code, and accordingly Defendant denies the allegations
6 of paragraph 107 on this basis.

7 108. Defendant denies the allegations of paragraph 108.

8 109. The allegations of paragraph 109 contain an incomplete description
9 of the California Labor Code, and accordingly Defendant denies the allegations
10 of paragraph 109 on this basis.

11 110. Defendant denies the allegations of paragraph 110.

12 111. Defendant denies the allegations of paragraph 111.

13 The remaining portions of the Complaint constitute a prayer for relief to
14 which no response is required.

15 AFFIRMATIVE DEFENSES

16 Without admitting to any allegation of the Complaint, Defendant asserts
17 the following affirmative defenses:

18 First Affirmative Defense

19 Defendant asserts that each and every one of Plaintiffs' causes of action or
20 claims for relief fail to state a claim upon which relief can be granted.

21 Second Affirmative Defense

22 Defendant asserts that each and every one of Plaintiffs' claims are barred
23 under the doctrines of estoppel and waiver.

24 Third Affirmative Defense

25 Defendant asserts that each and every one of Plaintiffs' claims are barred
26 by the doctrine of laches.

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Fourth Affirmative Defense

Defendant asserts that each and every one of Plaintiffs' claims are barred by the doctrine of unclean hands.

Fifth Affirmative Defense

Defendant asserts that Plaintiffs' failed to mitigate their damages, if any.

Sixth Affirmative Defense

Defendant asserts that each and every one of Plaintiffs' claims are barred by the applicable statute of limitations.

Seventh Affirmative Defense

Defendant asserts that Plaintiffs have suffered no damages as a result of any of Defendant's actions.

Eighth Affirmative Defense

Defendant asserts that the alleged damages, if any, are the responsibility of a third-party or third parties not named in this action.

Ninth Affirmative Defense

Defendant asserts that Plaintiffs has failed to join a necessary party.

Tenth Affirmative Defense

Defendant asserts that Plaintiffs' action is barred by their written, oral or implied waiver of known rights.

Eleventh Affirmative Defense

Defendant asserts that, without admitting the allegations of the Complaint, if Plaintiffs suffered any loss or damage in this action, it resulted from the active and primary conduct, negligence and breaches of Plaintiffs.

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Twelfth Affirmative Defense

Defendant asserts that Plaintiffs failed to perform all terms, conditions and covenants required under the agreements alleged in the Complaint and such failure completely released, excused and discharged Defendant from any and all obligations allegedly owed to Plaintiffs.

Thirteenth Affirmative Defense

Defendant asserts it substantially performed its duties, obligations, and requirements, arising from the agreements alleged in the Complaint and, therefore, Plaintiffs have no factual or legal basis to assert any cause of action based thereon.

Fourteenth Affirmative Defense

Defendant asserts all actions of Defendant were reasonable and in good faith and were not willful.

Fifteenth Affirmative Defense

Defendant asserts Plaintiffs' damages, if any, were caused by their own negligent and/or tortious and/or wrongful conduct. As a result, Plaintiffs may not recover damages from Defendant.

Sixteenth Affirmative Defense

Defendant asserts any and all sums allegedly due and owing to Plaintiffs have been satisfied and extinguished by payment to Plaintiffs.

Seventeenth Affirmative Defense

Defendant asserts that Plaintiffs' claims are subject to a set-off.

Eighteenth Affirmative Defense

Defendant asserts that Plaintiffs failed to comply with all applicable state and federal statutory prerequisites to recovery from Defendant and failed to exhaust all applicable state and federal administrative and contractual remedies.

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Nineteenth Affirmative Defense

Defendant asserts that Plaintiffs lacks standing to pursue each and every one of its claims.

Twentieth Affirmative Defense

Defendant asserts that Plaintiffs' state claims are preempted by federal law, including the federal-enclave doctrine.

Twenty-First Affirmative Defense

Plaintiffs' claims under the California Unfair Competition Law, California Business & Professions Code § 12200, et seq., are barred because they seek to recover amounts to which Plaintiffs are not entitled under the statute.

Twenty-Second Affirmative Defense

The Complaint fails to allege facts which would support a claim for attorneys' fees.

Twenty-Third Affirmative Defense

Defendant presently has insufficient knowledge or information upon which to form a belief as to whether they may have additional, as yet unstated, affirmative defenses available. Therefore, Defendant reserves the right to assert additional affirmative defenses in the event discovery indicates they would be applicable.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays:

1. That Plaintiffs take nothing by reason of their Complaint and that judgment be rendered in favor of Defendant;
2. That Defendant be dismissed with prejudice;
3. That Defendant be awarded its costs of suit incurred in defense of this action, including reasonable attorneys' fees; and

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4. For such other relief as the Court deems just and proper.

DATED: December 29, 2010

Respectfully submitted,

MARKS, GOLIA & FINCH, LLP

By: /s/ Daniel P. Scholz

MARK T. BENNETT

CHAD T. WISHCHUK

DANIEL P. SCHOLZ

Attorneys for Defendants Challenger
Sheet Metal, Inc., The Augustine
Company, Echo Pacific Construction,
Inc., and Jaynes Corporation of
California

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been filed electronically on this 29th day of December 2010 and is available for viewing and downloading to the ECF registered counsel of record. This also certifies that on this 29th day of December 2010, a true and correct copy of the within document was forwarded via U.S. Mail, postage prepaid, to the following counsel of record:

Via Electronic Service/ECF and U.S. Mail, postage prepaid:

Attorneys for Plaintiff:

Dennis J. Hayes, Esq. (SBN 123576)
E-Mail: djh@sdlaborlaw.com
Ricardo Ochoa, Esq. (SBN 206462)
E-Mail: ro@sdlaborlaw.com
Hayes & Cunningham, LLP
3258 Fourth Avenue
San Diego, California 92130
Telephone: (619) 297-6900
Facsimile: (619) 297-6901

DATED: December 29, 2010

MARKS, GOLIA & FINCH, LLP

By: /s/ Daniel P. Scholz
DANIEL P. SCHOLZ

Attorneys for Defendants Challenger Sheet
Metal, Inc., The Augustine Company, Echo
Pacific Construction, Inc., and Jaynes
Corporation of California
E-mail: dscholz@mgflp.com